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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/582,471	08/15/2000	DIRK FREUND	1826-017	8771

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EXAMINER

NASSER, ROBERT L

ART UNIT PAPER NUMBER

3736

DATE MAILED: 06/04/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/582,471

Applicant(s)
Freund et al

Examiner
Robert Nasser

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3736



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Feb 26, 2002
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 and 11-15 is/are rejected.
- 7) ☒ Claim(s) 10 is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 6) ☐ Other: _____

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Claim 11 is rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

The specification discloses that the multiplexer is a timing unit acting as a multiplexer. It is unclear what makes the device a timing unit, that is what does it time or control the timing of?

Claim 9 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The phrase "in particular" renders the claim indefinite in that it is unclear the speed and acceleration are limiting or exemplary.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 6, and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Nasiff. Nasiff determines blood pressure, and corrects the blood pressure based on an electric signal of the height differential of the sensor relative to the heart (see column lines 20-44).

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

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having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3, 5, 6, 8, 11, and 14 are rejected under 35 U.S.C. 103(a) as being anticipated by Ota et al US 5,778,879 in view of Peel III. Ota et al has a blood pressure measuring device 12 that includes a sensor for sensing the orientation of the arm that the blood pressure measuring device is on. The system provides feedback as to which way to move the arm for it to be properly positioned. Once it is properly positioned, the user presses the start button to trigger a blood pressure measurement. Accordingly, the only difference between Ota and the present invention is the that the present invention automatically triggers the blood pressure measurement upon satisfaction of the condition, e.g. proper positioning. Peel III is a device that makes blood pressure measurements that detects a condition and when the condition is satisfied (passage of a predetermined time period since the last measurement) automatically triggers a measurement. From this teaching, it would have been obvious to modify Ota et al to automatically trigger the measurement, to simplify it's operation.

Claims 1, 3, 5, 6, 8, 11, and 14 are rejected under 35 U.S.C. 103(a) as being anticipated by Ota et al JP 08215162. in view of Peel III . The second Ota reference is the Japanese language publication of the priority document to the US version of Ota. It has the same figures and presumably, the same disclosure. Ota et al has a blood pressure measuring device 12 that includes a sensor for sensing the orientation of the arm that the blood pressure measuring device is on. The system provides feedback as to which way to move the arm for it to be properly positioned.

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Once it is properly positioned, the user presses the start button to trigger a blood pressure measurement. Accordingly, the only difference between Ota and the present invention is that the present invention automatically triggers the blood pressure measurement upon satisfaction of the condition, e.g. proper positioning. Peel III is a device that makes blood pressure measurements that detects a condition and when the condition is satisfied (passage of a predetermined time period since the last measurement) automatically triggers a measurement. From this teaching, it would have been obvious to modify Ota et al to automatically trigger the measurement, to simplify its operation.

Claims 2 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over . Either Ota reference in view of Peel III, as applied to claims 1, 3, 5, 6, 8, 11, and 14, further in view of Claxton III, et al. The above combination uses the angle of inclination of the arm to determine a height relative to the heart and triggers measurement based on proper positioning. It does not correct the measurement based on orientation. However, Claxton III et al provides an automatic correction factor based on the height of the sensor relative to the heart, which is part of orientation. Hence, it would have been obvious to modify the above combination to correct the blood pressure based on the height differential, to provide more accurate measurements and reduced measurement times.

Claims 4, 9, 12, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over either Ota reference in view of Peel III, as applied to claims 1, 3, 5, 6, 8, 11, and 14 above, and further in view of Odagiri et al. Odagiri et al teaches that in order to be an accurate measurement,

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blood pressure measurements must be compensated for the effects of motion. Hence, it would have been obvious to modify the above combination to correct for motion's effects, so to increase the accuracy of measurement.

Claims 4, 9, 12, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nasiff in view of Odagiri et al. Odagiri et al teaches that in order to be an accurate measurement, blood pressure measurements must be compensated for the effects of motion. Hence, it would have been obvious to modify Nasiff to correct for motion's effects, so to increase the accuracy of measurement.

Claim 10 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Applicant's arguments filed 2/26/2002 have been fully considered but they are deemed moot in view of the new grounds of rejection.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period

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will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert L. Nasser Jr. whose telephone number is (703) 308-3251. The examiner can normally be reached on Monday-Thursday and alternate Fridays from 8:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver, can be reached on (703) 308-2582. The fax phone number for this Group is (703) 308-0758.

Communications via Internet e-mail regarding this application, other than those under 35 U.S.C. 132 or which otherwise require a signature, may be used by the applicant and should be addressed to [kevin.shaver@uspto.gov].

All Internet e-mail communications will be made of record in the application file. PTO employees do not engage in Internet communications where there exists a possibility that sensitive information could be identified or exchanged unless the record includes a properly signed express waiver of the confidentiality requirements of 35 U.S.C. 122. This is more clearly set forth in the Interim Internet Usage Policy published in the Official Gazette of the Patent and Trademark on February 25, 1997 at 1195 OG 89.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0858.

RLN
May 31, 2002

Robert L. Nasser Jr.
ROBERT L. NASSER
PRIMARY EXAMINER